

## I cannot pay my workers in cash.

**NOT TRUE.** You may pay your employees by check, cash, bank transfer, and/or in-kind (merchandise, services, etc.). However, you must provide employees with a statement of earnings that includes gross earnings, taxes deducted, any other deductions, and the net amount provided to the employee.

For more information, refer to "Paying cash wages 'under the table' . . . is it really worth the risk?" (DE 573CA)

## My worker has a city business license and business card so the worker is an independent contractor.

**NOT TRUE.** A city business license and business card, by themselves, do not make a worker an independent contractor. All of the common law factors need to be reviewed and weighed with respect to the specific circumstances of the services provided by each worker.

## I pay my workers solely by commission; therefore they are independent contractors.

**NOT TRUE.** The method of payment is not, by itself, a determining factor. All of the common law factors need to be considered and weighed to determine whether a worker is an employee. If the worker is an employee, then all remuneration for services (salary, hourly pay, piece rate, commissions, bonuses, stock options, vehicle, etc.) is wages.

For more information, refer to the Information Sheet: Wages (DE231A)

To help employers correctly classify workers and report payroll taxes, EDD offers various payroll tax seminars throughout California. For seminar dates, times and locations, go to the EDD Web site at [www.edd.ca.gov/taxsem](http://www.edd.ca.gov/taxsem) or telephone toll-free at 1-888-745-3886 for seminar information.



STATE OF CALIFORNIA

LABOR AND WORKFORCE DEVELOPMENT AGENCY

EMPLOYMENT DEVELOPMENT DEPARTMENT

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# INDEPENDENT CONTRACTORS MISCONCEPTIONS

*For more information, refer to the Information Sheet: Employment (DE 231) which is available on the EDD Web site at [www.edd.ca.gov](http://www.edd.ca.gov)*

# *When is an individual an employee?*

**An individual is an employee** when hired by an employer to perform services, and either (1) the law defines them as an employee (statutory employee) or (2) the employer has the right to exercise control over the manner and means by which the worker performs his/her services (common law employee).

## COMMON MISCONCEPTIONS

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1

### **If I issue an Internal Revenue Service (IRS) Form 1099 MISC the worker is an independent contractor.**

**NOT TRUE.** An IRS Form 1099MISC is simply a method the government uses to track and report certain types of non-employment income. When you provide an IRS Form 1099 MISC to a worker for payments of services, it does not automatically make the worker an independent contractor.

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2

### **If I pay a worker less than \$600 in a year, then the worker is a day laborer or casual laborer, and not subject to California payroll taxes.**

**NOT TRUE.** The amount paid to a worker is not a factor used to determine whether a worker is an employee or independent contractor. The amount paid to a worker may determine if you should issue an IRS Form 1099 MISC. Check with the IRS for the requirements for issuing an IRS Form 1099 MISC.

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3

### **The part-time, temporary, probationary, and substitute workers I employ are day laborers or casual laborers, not employees.**

**NOT TRUE.** The number of hours worked is not a factor used to determine whether a worker is an employee. Whether you call your workers part-time, full-time, temporary, permanent, probationary, or substitute does not change the fact that they are employees.

*Refer to the Information Sheet: Casual Labor (DE 231K) for more information.*

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### **When a family member works for me, he/she is not an employee.**

**NOT TRUE.** Family members working for your business are employees and subject to California payroll taxes unless certain conditions are met.

*For more information, refer to Information Sheet: Family Employment (DE 231 FAM)*

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### **My worker and I have signed a written contract that makes my worker an independent contractor.**

**NOT TRUE.** A written contract does not automatically make a worker an independent contractor. You need to look at certain factors, viewed in total, to determine if a worker is a common law employee or independent contractor. A written contract is only one of the factors you should consider.

*For more information, refer to the Information Sheet: Employment (DE231).*

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### **My competitors treat their workers as independent contractors; therefore, it is okay for me to treat my workers as independent contractors.**

**NOT TRUE.** The law defines employment relationships, not you or the actions of your competitors. If you misclassify your workers as independent contractors, EDD may assess you for the unpaid taxes for any unreported employees.